



Reprinted  
February 24, 2009

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## HOUSE BILL No. 1398

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DIGEST OF HB 1398 (Updated February 23, 2009 6:56 pm - DI 92)

**Citations Affected:** IC 5-22; IC 6-2.5; IC 6-3.1; IC 15-11; IC 15-15; IC 21-31; noncode.

**Synopsis:** Ethanol incentives. Provides that the E85 sales tax deduction applies only to reporting periods beginning on January 1 and ending before April 1. Specifies procedures for administering the deduction. Transfers administration of the deduction from the department of revenue to the state budget agency. Allows the blended biodiesel production tax credit to be carried forward 10 years instead of 6 years. Requires the Indiana corn marketing council to transfer \$500,000 each year beginning in 2010 to the budget agency for reimbursing the funds affected by the E85 sales tax deduction. Adds school corporations and state educational institutions to the list of governmental entities that are eligible to apply to the department of agriculture for a grant under the E85 fueling station grant program. Requires state educational institutions to purchase ethanol blended fuel and blended biodiesel fuel to the extent possible.

**Effective:** Upon passage; July 1, 2009; August 1, 2009.

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**Grubb, Friend, Pearson, Oxley**

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January 13, 2009, read first time and referred to Committee on Agriculture and Rural Development.  
February 17, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.

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HB 1398—LS 6935/DI 51+



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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1398

A BILL FOR AN ACT to amend the Indiana Code concerning  
taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-22-5-8, AS AMENDED BY P.L.6-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 8. (a) This section does not apply to a political  
4 subdivision, **except a school corporation (as defined in**  
5 **IC 20-18-2-16(a)).**  
6 (b) As used in this section, "blended biodiesel" has the meaning set  
7 forth in IC 6-3.1-27-2.  
8 **(c) As used in this section, "diesel fueled vehicle" refers to a**  
9 **vehicle that is capable of using diesel to fuel its primary motor.**  
10 ~~(c)~~ (d) As used in this section, "ethanol" means agriculturally  
11 derived ethyl alcohol.  
12 ~~(d)~~ (e) As used in this section, "gasohol" means gasoline that  
13 contains:  
14 (1) at least ten percent (10%) ethanol; or  
15 (2) ethyl tertiary butyl ether (ETBE) additives derived from  
16 ethanol.  
17 ~~(e)~~ (f) As used in this section, "gasoline fueled vehicle" refers to a

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vehicle that is capable of using gasoline to fuel its primary motor.

~~(f)~~ **(g)** As used in this section, "vehicle" includes the following:

- (1) An automobile.
- (2) A truck.
- (3) A tractor.

~~(g)~~ **(h)** Except as provided by subsection ~~(f)~~; **(j)**, a governmental body shall whenever possible purchase gasohol to fuel the gasoline fueled vehicles owned or operated by the governmental body.

~~(h)~~ **(i)** Except as provided by subsection ~~(f)~~; **(j)**, a governmental body shall whenever possible purchase blended biodiesel fuel to fuel the diesel fueled vehicles owned or operated by the governmental body.

~~(i)~~ **(j)** The following vehicles are exempt from the requirements of subsections ~~(g)~~ and **(h) and (i)**:

- (1) A vehicle that is leased by the governmental body for thirty (30) days or less.
- (2) A vehicle whose official operating manual, as issued by the manufacturer of the vehicle, contains a statement that the use of gasohol or blended biodiesel fuel will damage the engine of the vehicle.
- (3) A vehicle that:
  - (A) is primarily powered by an electric motor; or
  - (B) can use only propane, compressed or liquified natural gas, or methanol as its fuel source.

SECTION 2. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under

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1 IC 6-6-2.5.

2 (j) "Federal gasoline tax" means the excise tax imposed under  
3 Section 4081 of the Internal Revenue Code.

4 (k) "Federal special fuel tax" means the excise tax imposed under  
5 Section 4041 of the Internal Revenue Code.

6 (l) "Price per unit before the addition of state and federal taxes"  
7 means an amount which equals the remainder of:

8 (1) the total price per unit; minus

9 (2) the state gross retail, Indiana gasoline or special fuel, and  
10 federal gasoline or special fuel taxes which are part of the total  
11 price per unit.

12 (m) "Total price per unit" means the price per unit at which gasoline  
13 or special fuel is actually sold, including the state gross retail, Indiana  
14 gasoline or special fuel, and federal gasoline or special fuel taxes which  
15 are part of the sales price.

16 (n) "Distributor" means a person who is the first purchaser of  
17 gasoline from a refiner, a terminal operator, or supplier, regardless of  
18 the location of the purchase.

19 (o) "Prepayment rate" means a rate per gallon of gasoline  
20 determined by the department under section 14 of this chapter for use  
21 in calculating prepayment amounts of gross retail tax under section 9  
22 of this chapter.

23 (p) "Purchase or shipment" means a sale or delivery of gasoline, but  
24 does not include:

25 (1) an exchange transaction between refiners, terminal operators,  
26 or a refiner and terminal operator; or

27 (2) a delivery by pipeline, ship, or barge to a refiner or terminal  
28 operator.

29 (q) "Qualified distributor" means a distributor who:

30 (1) is a licensed distributor under IC 6-6-1.1; and

31 (2) holds an unrevoked permit issued under section 7 of this  
32 chapter.

33 (r) "Refiner" means a person who manufactures or produces  
34 gasoline by any process involving substantially more than the blending  
35 of gasoline.

36 (s) "Terminal operator" means a person that:

37 (1) stores gasoline in tanks and equipment used in receiving and  
38 storing gasoline from interstate or intrastate pipelines pending  
39 wholesale bulk reshipment; or

40 (2) stores gasoline at a boat terminal transfer that is a dock or  
41 tank, or equipment contiguous to a dock or tank, including  
42 equipment used in the unloading of gasoline from a ship or barge

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and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

**(t) "Ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol.**

SECTION 3. IC 6-2.5-7-5, AS AMENDED BY P.L.146-2008, SECTION 315, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals six and fifty-four hundredths percent (6.54%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount

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determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to ~~subsection (d)~~, **subsections (d) and (f)**, for **qualified** reporting periods **beginning after June 30, 2009, and** ending before July 1, 2020, determine the product of:

(A) eighteen cents (\$0.18); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed ~~one million dollars (\$1,000,000)~~ **the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions** for all retail merchants in ~~all a particular qualified reporting periods; period.~~ A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. ~~If the department determines that the sum of:~~

(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

~~will exceed one million dollars (\$1,000,000);~~ **Before August 1 of each year, the budget agency shall estimate whether the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year will exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund**

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1 is insufficient to cover the amount of the deductions expected to be  
 2 reported, the department budget agency shall publish in the Indiana  
 3 Register a notice that the deduction program under subsection (c) STEP  
 4 TWO is terminated after the date specified **suspended with respect to**  
 5 **the qualified reporting periods occurring in the following calendar**  
 6 **year in the notice** and that no additional deductions will be granted for  
 7 retail transactions occurring after the date specified in the notice. **in the**  
 8 **qualified reporting periods occurring in the following calendar**  
 9 **year.**

10 (e) As used in this section, "qualified reporting period" refers  
 11 to a reporting period beginning after December 31 and ending  
 12 before April 1 of each year.

13 (f) The budget agency may suspend the deduction program  
 14 under subsection (c) STEP TWO for a particular year at any time  
 15 during a qualified reporting period if the budget agency  
 16 determines that the amount of money in the retail merchant E85  
 17 deduction reimbursement fund and the amount of money that will  
 18 be transferred to the fund on July 1 will not be sufficient to  
 19 reimburse the deductions expected to occur before the deduction  
 20 program for the year ends on March 31. The budget agency shall  
 21 immediately provide notice to the participating retail merchants of  
 22 the decision to suspend the deduction program for that year.

23 SECTION 4. IC 6-3.1-27-12, AS AMENDED BY P.L.191-2005,  
 24 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2009]: Sec. 12. (a) If the amount of the credit determined  
 26 under this chapter for a taxpayer in a taxable year exceeds the  
 27 taxpayer's state tax liability for that taxable year, the taxpayer may carry  
 28 over the excess to the following taxable years. The amount of the credit  
 29 carryover from a taxable year shall be reduced to the extent that the  
 30 carryover is used by the taxpayer to obtain a credit under this chapter  
 31 for any subsequent taxable year. A credit may not be carried forward  
 32 for more than ~~six (6)~~ **ten (10)** taxable years following the taxable year  
 33 in which the taxpayer was first entitled to claim the credit.

34 (b) A taxpayer is not entitled to a carryback or refund of any unused  
 35 credit. A taxpayer may not sell, assign, convey, or otherwise transfer  
 36 the tax credit provided by this chapter.

37 SECTION 5. IC 15-11-11-6.5, AS ADDED BY P.L.91-2008,  
 38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2009]: Sec. 6.5. As used in this chapter, "unit" means a city,  
 40 town, county, or township, **school corporation (as defined in**  
 41 **IC 20-18-2-16(a)), or state educational institution (as defined in**  
 42 **IC 21-7-13-32).**

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SECTION 6. IC 15-15-12-30.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30.5. (a) The retail merchant E85 deduction reimbursement fund is established. The fund consists of:**

- (1) assessments transferred by the council for deposit in the fund under section 32.5 of this chapter;
- (2) gifts; and
- (3) grants.

(b) Except as provided in subsection (g), money in the fund may only be used for the purposes described in subsection (d).

(c) On May 1, the budget agency shall determine the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)).

(d) The budget agency shall transfer the amount determined under subsection (c) from the fund for deposit. The amount transferred under this subsection shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) If the amount of money in the fund on May 1 is insufficient to reimburse the state for all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)), the budget agency shall deduct from any amounts transferred for deposit into the fund in the remainder of that calendar year an amount sufficient to cure the insufficiency. The budget agency shall transfer any amounts deducted under this subsection for deposit in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.

(g) If the retail merchant E85 deduction program is terminated, any balance in the fund must be transferred to the council.

SECTION 7. IC 15-15-12-32.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 32.5. On July 1, 2010, and each year thereafter, the council shall transfer five hundred thousand dollars (\$500,000) to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter.**

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SECTION 8. IC 21-31-9-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) As used in this section, "blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.**

**(b) As used in this section, "diesel fueled vehicle" refers to a vehicle that is capable of using diesel to fuel its primary motor.**

**(c) As used in this section, "ethanol" means agriculturally derived ethyl alcohol.**

**(d) As used in this section, "ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol.**

**(e) As used in this section, "gasoline fueled vehicle" refers to a vehicle that is capable of using gasoline to fuel its primary motor.**

**(f) As used in this section, "vehicle" includes the following:**

**(1) An automobile.**

**(2) A truck.**

**(3) A tractor.**

**(g) Except as provided by subsection (i), a state educational institution shall whenever possible purchase ethanol blended fuel to fuel the gasoline fueled vehicles owned or operated by the state educational institution.**

**(h) Except as provided by subsection (i), a state educational institution shall whenever possible purchase blended biodiesel fuel to fuel the diesel fueled vehicles owned or operated by the state educational institution.**

**(i) The following vehicles are exempt from the requirements of subsections (g) and (h):**

**(1) A vehicle that is leased by the state educational institution for thirty (30) days or less.**

**(2) A vehicle whose official operating manual, as issued by the manufacturer of the vehicle, contains a statement that the use of ethanol blended fuel or blended biodiesel fuel will damage the engine of the vehicle.**

**(3) A vehicle that:**

**(A) is primarily powered by an electric motor; or**

**(B) can use only propane, compressed or liquified natural gas, or methanol as its fuel source.**

SECTION 9. IC 6-2.5-7-5.5 IS REPEALED [EFFECTIVE JULY 1, 2009].

SECTION 10. IC 15-15-12-30 IS REPEALED [EFFECTIVE AUGUST 1, 2009]

SECTION 11. [EFFECTIVE AUGUST 1, 2009] **(a) On August 1,**

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1     **2009, the budget agency shall transfer any remaining balance in**  
2     **the Indiana corn market development account established under**  
3     **IC 15-15-12-30 (before its repeal) to the retail merchant E85**  
4     **deduction reimbursement fund established by IC 15-15-12-30.5, as**  
5     **added by this act.**  
6         **(b) This SECTION expires January 1, 2010.**  
7     **SECTION 12. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1398, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 24 through 42, begin a new paragraph and insert:

"SECTION 2. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(1) the total price per unit; minus

(2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of

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gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline determined by the department under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

- (1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or
- (2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) "Qualified distributor" means a distributor who:

- (1) is a licensed distributor under IC 6-6-1.1; and
- (2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

- (1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or
- (2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

**(t) "Ethanol blended fuel" refers to any blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol."**

Delete page 3.

Page 4, delete lines 1 through 7.

Page 4, line 29, reset in roman "total".

Page 4, line 29, delete "sum of the".

Page 4, line 29, delete "E20, E30, and".

Page 5, line 11, after "for" insert "**qualified**".

Page 5, line 13, delete "ten" and insert "**twelve**".

Page 5, line 13, delete "(\$0.10)" and insert "**(\$0.12)**".

Page 5, line 14, delete "sum of the".

Page 5, line 14, delete "E20, E30, and".

Page 5, line 22, strike "one million dollars (\$1,000,000)" and insert

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**"the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions".**

Page 5, line 23, strike "all" and insert **"a particular qualified"**.

Page 5, line 23, strike "periods." and insert **"period."**.

Page 5, line 25, strike "If the department determines that the sum of:".

Page 5, strike lines 26 through 29.

Page 5, line 30, strike "will exceed one million dollars (\$1,000,000)," and insert **"Before August 1 of each year, the budget agency shall estimate whether the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year would exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported,"**.

Page 5, line 30, strike "department" and insert **"budget agency"**.

Page 5, line 32, strike "terminated after the date specified" and insert **"suspended with respect to the qualified reporting periods occurring in the following calendar year"**.

Page 5, line 33, strike "in the notice".

Page 5, line 33, strike "additional".

Page 5, line 34, strike "after the date specified in the notice." and insert **"in the qualified reporting periods occurring in the following calendar year."**.

Page 5, delete lines 35 through 42, begin a new paragraph and insert:

**"(e) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.**

SECTION 4. IC 6-3.1-27-12, AS AMENDED BY P.L.191-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A credit may not be carried forward

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for more than ~~six (6)~~ **ten (10)** taxable years following the taxable year in which the taxpayer was first entitled to claim the credit.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter."

Page 6, delete lines 1 through 15.

Page 6, delete lines 22 through 42, begin a new paragraph and insert:

"SECTION 6. IC 15-15-12-30, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 30. (a) The Indiana corn market development account is established within the state general fund for purposes of market development and reimbursing the state for the E85 retail merchant deduction allowed under IC 6-2.5-7-5(d). The account shall be administered by the council. The account consists of:

- (1) assessments the council receives under this chapter;
- (2) gifts; and
- (3) grants.

(b) The expenses of administering this chapter must be paid from money in the account. ~~If the balance of the account is not more than five hundred thousand dollars (\$500,000) in a fiscal year, the council may expend not more than twenty-five percent (25%) of the balance for administrative expenses. If the account has a balance of more than five hundred thousand dollars (\$500,000) in a fiscal year, the council may spend an additional amount of not more than ten percent (10%) of the balance over five hundred thousand dollars (\$500,000) for administrative expenses.~~

(c) On July 1 of each year the budget agency shall transfer from the account an amount equal to ~~the lesser of:~~

- (1) ~~twenty-five percent (25%) of the balance of the account on the immediately preceding June 30, before the deduction of any expenses under subsection (b); or~~
- (2) ~~the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) and IC 6-2.5-7-5.5, in the immediately preceding state fiscal year. The amount transferred under this subsection (c) shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1. five hundred thousand dollars (\$500,000) to the retail merchant E85 deduction reimbursement fund established under section 30.5 of this chapter.~~

(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same

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manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(e) Money in the account at the end of a state fiscal year does not revert to the state general fund.

SECTION 7. IC 15-15-12-30.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30.5. (a) The retail merchant E85 deduction reimbursement fund is established.**

**(b) The fund consists of money transferred from the Indiana corn market development account under section 30 of this chapter. Except as provided in subsection (g), money in the fund may only be used for the purposes described in subsection (d).**

**(c) Before May 1, the budget agency shall determine the sum of all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)).**

**(d) The budget agency shall transfer the amount determined under subsection (c) from the fund for deposit. The amount transferred under this subsection shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.**

**(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.**

**(f) If the amount of money in the fund is insufficient to reimburse the state for all retail merchant deductions allowed under IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)), the budget agency shall transfer from the Indiana corn market development account established under section 30 of this chapter an amount sufficient to cure the insufficiency. Money in the state general fund may not be expended for the purposes described in this section.**

**(g) If the retail merchant E85 deduction program is terminated, any balance in the fund must be transferred to the Indiana corn market development account established under section 30 of this chapter."**

Delete pages 7 through 10.

Page 11, delete lines 1 through 16.

Page 11, delete lines 25 through 29, begin a new paragraph and insert:

**"(d) As used in this section, "ethanol blended fuel" refers to any**

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**blend of gasoline and ethanol nominally consisting of more than ten percent (10%) but less than eighty-five percent (85%) ethanol."**

Page 11, line 37, delete "gasohol" and insert "**ethanol blended fuel**".

Page 12, line 8, delete "gasohol" and insert "**ethanol blended fuel**".

Page 12, delete lines 14 through 30, begin a new paragraph and insert:

"SECTION 9. IC 6-2.5-7-5.5 IS REPEALED [EFFECTIVE JULY 1, 2009]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1398 as introduced.)

PFLUM, Chair

Committee Vote: yeas 11, nays 0.

# HOUSE MOTION

Mr. Speaker: I move that House Bill 1398 be amended to read as follows:

Page 4, line 8, delete "[EFFECTIVE UPON PASSAGE]" and insert "[EFFECTIVE JULY 1, 2009]".

Page 5, line 8, strike "subsection (d)," and insert "**subsections (d) and (f),**".

Page 5, line 9, after "periods" insert "**beginning after June 30, 2009, and**".

Page 5, line 10, reset in roman "eighteen".

Page 5, line 10, delete "twelve".

Page 5, line 10, reset in roman "(\$0.18);".

Page 5, line 10, delete "(\$0.12);".

Page 5, line 32, after "whether" insert "**the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and**".

Page 5, line 35, delete "would" and insert "**will**".

Page 6, between lines 8 and 9, begin a new paragraph and insert:

**"(f) The budget agency may suspend the deduction program under subsection (c) STEP TWO for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund and the amount of money that will**

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be transferred to the fund on July 1 will not be sufficient to reimburse the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to the participating retail merchants of the decision to suspend the deduction program for that year."

Page 6, delete lines 29 through 42.

Page 7, delete lines 1 through 24.

Page 7, line 28, after "established." insert **"The fund consists of:**

- (1) assessments transferred by the council for deposit in the fund under section 32.5 of this chapter;**
- (2) gifts; and**
- (3) grants."**

Page 7, line 29, delete "The fund consists of money transferred from the Indiana"

Page 7, delete line 30.

Page 7, line 33, delete "Before" and insert **"On"**.

Page 8, line 4, after "fund" insert **"on May 1"**.

Page 8, line 8, delete "transfer from the Indiana corn market development account" and insert **"deduct from any amounts transferred for deposit into the fund in the remainder of that calendar year"**.

Page 8, line 9, delete "established under section 30 of this chapter".

Page 8, line 10, delete "Money in the state general fund may not be" and insert **"The budget agency shall transfer any amounts deducted under this subsection for deposit in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1."**

Page 8, delete line 11.

Page 8, line 13, delete "Indiana corn" and insert **"council"**.

Page 8, delete lines 14 through 15, begin a new paragraph and insert:

**"SECTION 8. IC 15-15-12-32.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32.5. On July 1, 2010, and each year thereafter, the council shall transfer five hundred thousand dollars (\$500,000) to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter."**

Page 9, between lines 12 and 13, begin a new paragraph and insert:

**"SECTION 11. IC 15-15-12-30 IS REPEALED [EFFECTIVE AUGUST 1, 2009]**

**SECTION 12. [EFFECTIVE AUGUST 1, 2009] (a) On August 1,**

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2009, the budget agency shall transfer any remaining balance in the Indiana corn market development account established under IC 15-15-12-30 (before its repeal) to the retail merchant E85 deduction reimbursement fund established by IC 15-15-12-30.5, as added by this act.

(b) This SECTION expires January 1, 2010."

Renumber all SECTIONS consecutively.

(Reference is to HB 1398 as printed February 18, 2009.)

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